

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

GARY E. SUTTON,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:18-CV-00183-ERW
)	
FRANCISCO QUINTANA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner Gary E. Sutton’s (“Sutton”) Motion Pursuant to Rule 59(e) to Alter or Amend the Judgment. ECF No. 76. Upon review of the motion and the underlying criminal case, the Court finds Sutton’s Rule 59(e) motion is moot.

On April 18, 2019, this Court issued a Memorandum and Order granting Sutton’s request for habeas relief pursuant to 28 U.S.C. § 2241 and stating an order would be entered in Sutton’s criminal case 1:06-CR-00052-RWS. ECF No. 64. The Court found Sutton’s second-degree burglary conviction in Missouri could not be used to enhance his sentence under the Armed Career Criminal Act, and thus his sentence as an armed career criminal was improper. ECF No. 64 p. 8. The following day, the Government filed a Motion to Stay Execution of Judgment pending a determination by the Department of Justice regarding a potential appeal in both the civil and criminal cases. ECF No. 66; ECF No. 118, Case No. 1:06-CR-00052-RWS. The Court granted the Government’s motion and stayed execution of judgment until June 18, 2019. ECF No. 68. The Government filed its notice of appeal on June 18, 2019. However, on June 21, 2019, the Eighth Circuit Court of Appeals issued a letter to the Government indicating that the notice of appeal did not appear to have been filed within 60 days after entry of judgment. ECF

No. 71. Thereafter, the Government filed a motion for leave to file a late notice of appeal under Rule 4(a)(5) of the Federal Rules of Appellate Procedure, which the Court granted. ECF Nos. 72, 73.

In the criminal matter, Case No. 1:06-CR-00052-RWS, United States Chief District Judge Rodney W. Sippel also granted the Government's motion to stay execution of judgment. ECF No. 119. Sutton then filed a motion to expedite his release, and on August 22, 2019, Judge Sippel ordered the Government to address whether Sutton should be resentenced in the criminal matter. ECF No. 122. On August 27, 2019, the Government responded the Department of Justice determined an appeal should not be pursued, and the Government dismissed the appeal. ECF No. 123. On August 29, 2019, the Court issued an Amended Judgment and sentenced Sutton to time served and supervised release for a term of 3 years, along with restitution. ECF No. 124.

Sutton's motion to alter or amend the judgment under Rule 59(e) pertains solely to this Court's order granting the Government leave to file a late notice of appeal. However, the Government has since dismissed the appeal, and Sutton has been released from prison and is currently on supervised release. Therefore, his motion for Rule 59(e) relief is now moot.

Accordingly

IT IS HEREBY ORDERED that Petitioner Gary E. Sutton's Motion Pursuant to Rule 59(e) to Alter or Amend the Judgment [76] is **DENIED** as **MOOT**.

Dated this 18th day of December, 2019.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE